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Citation for published version (APA):

Tillin, L. (2018). Federalism and Democracy in Today's India. *Economic and Political Weekly*, 53(33).
<https://www.epw.in/journal/2018/33/indias-democracy-today/federalism-and-democracy-todays-india.html>

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Federalism and Democracy in Today's India

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Federalism and democracy are typically seen as mutually supportive. Federalism depends upon a constitutionally enshrined division of power between at least two levels of government, a system of territorial representation that accommodates diverse identities and interests, and a separation of powers with an independent arbiter such as a Supreme Court to adjudicate on disputes between levels of government. These are hard conditions to uphold in undemocratic settings. In turn, classic theories of federalism see it as offering important protections to democracy by preventing the tyranny of majorities and protecting a degree of self-rule for minorities. However, federalism's implications for democracy are not straightforward. One reason for this is that federal institutions come in many shapes and sizes.

The model of federalism that India's Constituent Assembly designed seven decades ago empowers the central government, creates strong inter-dependence between the Centre and states and in some important respects has relatively weak safeguards for the autonomy of states.² The country has undergone a deep process of federalisation since the 1950s during which time its internal borders have been reorganised to accommodate the demands of linguistic and other ethnic minorities, and power has flown away from Delhi as a result of political and economic decentralisation. Yet the return of a dominant national party in power at the Centre from 2014, has raised new questions about the interactions between federalism and democracy in India. How far does federalism in India temper majoritarian trends within its democracy? Can a party with a nation-wide majority centralise policy-making processes and challenge the autonomy of the states? Would it be good for India's social and economic

health – its ability to pursue goals of national economic development - if the central government was re-empowered in this way?

This essay considers the implications – for both democracy and federalism - of the return of centralised leadership under Prime Minister Narendra Modi after three decades in which political and economic power has flowed away from Delhi. It will show that although states have been empowered in recent decades by economic and political decentralisation, India's federal institutions – by design – place relatively weak checks on the power of a government led by a party that has attained a majority in the national parliament. The BJP had to work within the landscape of a denationalised party system to build political dominance at the all-India level, but the kind of division of power enshrined within India's federal system has placed fewer constraints on the party's ability to renationalise both political debate (including via majoritarian appeals) and policy processes since 2014. These moves towards renationalisation challenge the autonomy which states had acquired during earlier decades of political and economic decentralisation.

An analysis of the relationship between federalism and democracy is important for India, but also for the wider class of federal systems that have adopted flexible forms of federalism that bear some resemblance to the Indian model. Almost twenty years ago, Alfred Stepan – who passed away last year and had engaged closely with India in the latter years of his career – published an important article entitled *Federalism and Democracy: Beyond the US Model*. This was followed by a series of pieces in which he explored the relationship between federalism, democracy and nationalism. In these works, Stepan made two important observations. Firstly, he emphasised that beyond the 'coming together' model of US-style federalism, a larger number of countries – such as India - had opted for forms of federalism as a means of 'holding together' their diverse societies within a political union. Secondly, he suggested that the resultant federal systems varied in the extent to which they were designed

to constrain the power of national majorities or the *demos*. Those countries with more ‘demos constraining features’ had institutionalised territorial interests in a stronger fashion which constrained the power of popular national majorities and slowed down policy-making processes because of the number of potential veto players involved. Whereas more centralised, ‘demos enabling’ federal systems have allowed greater flexibility in achieving national-level policy changes or the accommodation of regional demands when circumstances change – as they often do in new democracies. Stepan considered India a prominent example of the latter class of demos-enabling federal systems.

This essay takes the opportunity to reflect on some of the lessons from Stepan’s work for our understanding of federalism and democracy in India, in a period of re-centralisation of political power. It will begin by setting out some of the assumptions built into classic theories of democracy which see federalism as an implicit check on the power of majorities. It will then consider the ways in which Stepan’s classification of demos-constraining and demos-enabling constitutions offer insights into the varying tendencies for federal models such as India’s to constrain – or not – the majoritarian impulses of democracy.

Federalism in Theory: A Check on the Power of Majorities and Populism?

One of the primary recommendations of federalism from the point of view of democratic theory is its ability to protect against the potential tyranny of a majority, especially the challenges represented by a populist leader. For William Riker, a twentieth century American theorist of federalism, this was one of its main attractions. ‘The populist ideal requires that rulers move swiftly and surely to embody in law the popular decision on an electoral platform,’ he wrote (Riker 1982, 247). American federalism produced a multi-cameral legislature with a president, Senate and House of Representatives, which are each elected by

a different configuration of constituencies. This system of divided power, Riker argued, served to keep the passions of an individual leader under check.

Beyond this, federalism has also been associated with non-majoritarian forms of democracy. Arend Lijphart (1999) saw federalism as one of the two principal dimensions of a consensual as opposed to majoritarian model of democracy, particularly important for plural societies. Rather than seeing government by the majority as the *sine qua non* of democracy, the consensual model aims to secure broad participation in government and broad agreement on the policies adopted by a central government.

Thus, in some traditions of thinking about federalism, it is seen as a model of distributing power that limits the power of majorities acting alone. As Daniel Elazar (1987, 6) wrote,

‘In the broadest sense, federalism involves the linking of individuals, groups, and polities in lasting but limited union in such a way as to provide for the energetic pursuit of common ends while maintaining the respective integrities of all parties...In a federal system, basic policies are made and implemented through negotiation in some form so that all can share in the system’s decision-making and executing processes.’

By ensuring that sovereignty is divided, federalism is thought to prevent the consolidation of political power by a singular, dominant national majority at the central level. There is thus a deep vein of thinking that sees federalism as facilitating an essentially non-majoritarian form of democracy.

However, one of Alfred Stepan’s lasting contributions to scholarship on federalism and democracy was to demonstrate that there is, in fact, much more variety among existing federal systems in the extent to which they facilitate, or place checks on, the power of majorities at the national level. He urged scholars to rethink ‘the normative bias in favour of

majority-limiting federalism' (Stepan 2004, 41).³ He did so because he argued that forms of federalism that placed the strongest checks on majorities often ended up producing a 'structurally induced policy status quo' that could itself be a danger to democratic consolidation in new democracies. He saw policy 'efficacy' as an important quality of democratic systems because it allowed the debate and adoption of policies deemed important by a majority of political leaders and the electorate. Without this kind of efficacy there would be a serious risk to the legitimacy of democracy itself. Furthermore, if countries with multi-national societies were forced to adopt what he described as the kinds of 'demos constraining' checks enshrined in the coming-together model of American federalism, they would only be able to accommodate their ethnic, religious or linguistic diversity by making their wider policy processes cumbersome and rigid.

Stepan identified a continuum among federal systems from more demos-constraining to demos-enabling. He defined the *demos* as 'all of the citizens in the polity taken as a whole' (Stepan 1999, 21) and was interested in the extent to which federal systems constrain the 'law-making capacity of the democratically elected legislators at the centre' (Stepan 2001, 316). Where a system sat along this continuum was defined by three constitutional variables as well as the nature of the party system. The three constitutional variables related to the design and policy scope of the territorial chamber (or upper house) of a federal system, and the extent to which policy issues are placed beyond the policy agenda of the *demos* because they are constitutionally allocated to federal sub-units.

Most federal systems have an upper house of the legislature which provides representation to the territorial sub-units of the federal system. More demos-constraining federal systems give equal representation to federal sub-units in this chamber, regardless of their population sizes. In such constitutional models, which often arise in 'coming together' federations where previously independent entities have pooled their sovereignty to become a federation, small

under-populated units are over-represented in terms of their population. According to this measure, Brazil, Argentina and the United States are very demos-constraining because they institutionalise the veto power of these, often small, federal sub-units at the national level and enhance their say in national policy debates. Whereas India sits at the more demos-enabling end coming much closer to one person one vote in its upper chamber (the *Rajya Sabha*), which in effect mirrors the composition of its lower chamber (the *Lok Sabha*).

The second measure relates to the policy competencies of the territorial chamber. Where the upper house has greater powers, the national *demos* is more constrained. For instance, the Brazilian senate is able to vote on all issues whereas in India, the *Rajya Sabha* is less powerful. The *Rajya Sabha* cannot vote on money bills, it has no role in votes of no confidence and when there is gridlock between the two houses, the preferences of the *Lok Sabha* would hold sway in a joint session of both houses of parliament. The *Rajya Sabha* is more of a revisionary chamber, and has weak powers to protect the interests of the states against central interventions such as President's Rule.

The third measure is the extent of powers that are constitutionally allocated to the federal sub-units. Here Stepan argued that 'When too many issues are constitutionally embedded, the result is profoundly undemocratic, because these issues cannot be decided by a normal majority' (Stepan 1999, 28). He highlighted the example of the Brazilian constitution which enumerated very strong powers for the states in the constitution, and protected them by making constitutional amendment difficult. By contrast, India's Constituent Assembly deliberately adopted a centralised constitution in the aftermath of partition, partly because the architects of the constitution believed it necessary to give the central government the flexibility to assert power where it was necessary to protect democracy.

It was India's demos-enabling constitution, Stepan argued, that has also allowed it to adopt flexible adaptations to its federal design such as the linguistic reorganisation of states, which would have been more difficult under a different kind of federal constitution. India's central government could create new states to respond to the demands of linguistic minorities in the 1950s because of the demos-enabling features of the constitution. Article 3 of the constitution gave the central government (via a parliamentary majority) the right to create new states or alter state boundaries, rather than constitutionally allocating this power to state governments (who would be more likely to block demands for state bifurcation). The fact that states are not represented on an equal basis in the *Rajya Sabha* also meant that creating more new states did not disturb the existing balance of power between all states in the upper house. This has made it considerably easier to create a new state in India, compared to the United States for instance (Tillin 2015b).

Such adaptations have been essential for the accommodation of India's linguistic diversity. Without the ability to create linguistic states, India may have faced destabilising attempts to secede in many more places. The linguistic reorganisation of state borders gave strong protection to the rights of those linguistic minorities who were large enough to claim states of their own. For Stepan, then, India's federal design therefore reconciled cultural diversity with policy making efficacy in contrast to federal systems that were designed institutionally to disperse power territorially in order to constrain decision making by national majorities.

Democracy, Federalism and the Party System in India

However institutional design is far from all that matters in shaping the relationship between federalism and democracy. Changes to India's party system have over time intimately shaped how Centre-state relations have functioned in practice. Thus the interactions between federalism and democracy must be seen as dynamic rather than static in quality.

The most important shift historically in terms of its implications for the operation of federalism was that from the dominance of the Congress party towards a genuinely multi-party democracy. In the 1990s and 2000s, the regionalisation of the party system and the onset of economic liberalisation hastened a process of federalisation in which the states gained political and economic autonomy (M. P. Singh and Saxena 2013). It also enshrined the necessity of coalition government bringing together national and regional parties in central government.

In an indirect way, the regionalisation (or ‘de-nationalisation’) of India’s party system also served as a check on the rise of Hindu majoritarianism at the all-India level. As the power of the states vis-à-vis the Centre was enhanced, and as the state level emerged as the centre of the political landscape, it became more difficult to mobilise or appeal to Hindus as a national community across India. Attempts by Hindu nationalists to fix people’s identities permanently on their religion historically failed because of the fluidity with which political entrepreneurs mobilised alternative, competing identities at the state level (see also Chandra 2005; Manor 1998). The identities that are salient in local politics have always varied state by state.

This meant that as the BJP increased its political presence in the 2010s, it had to work within the frame of state politics. The BJP’s breakthrough in new parts of the country built on long-term processes of local embedding via organisation building by the Sangh Parivar, as well as shorter term responses to the leadership appeal of Narendra Modi since 2014.⁴ In other words, it is important to note that the ascendancy of the Bharatiya Janata Party (BJP) was not achieved through any reversal of the fundamental logic of party system de-nationalisation that had taken place in preceding decades (Schakel and Swenden 2016; Tillin 2015a).⁵

However once the BJP has moved closer towards political dominance at the all-India level, the institutional structure of India's federal system places weaker checks on the power of a national leader or party, precisely because of what Stepan describes as its 'demos-enabling' character. The weak institutionalisation of states' place within the national legislature and policy-making processes enables a party with a parliamentary majority to centralise power. Other institutional innovations since 2014, such as the replacement of the Planning Commission with the Niti Aayog and the creation of the Goods and Services Tax Council have also enhanced nationalising tendencies in policy processes. Ajay Kumar Singh (2018) has argued that in the post-2014 context, India is entering a phase of 'national federalism' in which the 'locus of sovereignty [shifts] from state capitals to the national capital where choices are rarely politically negotiated, but rather decided through the compulsiveness of techno-bureaucrats and the monopoly of resources by the centre.' In this scenario, the multinational fabric of Indian federalism which has evolved to accommodate and reflect cultural and linguistic diversity may also come under challenge from the ascendancy of a Hindu nationalist conception of Indian nationhood (Adeney and Bhattacharyya 2018).

The Boundaries of Political Debate: State-centric versus National

The Modi-led BJP has consolidated its power at the national level since forming the central government in 2014 by winning elections and forming governments in a wide array of states. The BJP's electoral strategy has rested on a successful attempt to nationalise political debate and to relegate what Suhas Palshikar (in this issue) describes as 'state-specific factors' to the sidelines of political contestation. By attempting to create what Palshikar describes as a hegemonic national discourse fusing development with national identity that penetrates across all states, the BJP has expanded its position beyond its historical areas of strength. In addition, once it has achieved a certain dominance, the BJP can start to benefit from the state-specificity of its opponents, which makes it difficult for them to coordinate across state

boundaries, just like the situation during the ‘Congress system’ at its peak. In other words, the state-specificity of non-BJP governments traps potential challengers within their states, and weakens their ability to lead a national opposition.⁶ Another of the BJP’s strategies in expanding its territorial base has been to partner with small regional parties and to magnify their advantage over state-level incumbents by giving them access to national resources and the benefits associated with Modi’s national level stature.

Like Indira Gandhi before him, Modi has reinforced his ‘national’ attraction through what Paul Brass (1984, 118) described as ‘appeals to large categories of voters on transcendent or very dramatic issues.’ This route to national power relies upon a ‘politics of crisis that plays upon or manufactures dramatic issues.’ The jingoistic politics of surgical strikes over the Line of Control in Kashmir in late 2016, followed soon after by the national spectacle of demonetisation are contemporary manufactured dramas of just such a kind. As a policy initiative of the central government, demonetisation was unique in recent times in reaching every citizen of India directly, unmediated by state governments. Every citizen was asked to make a personal sacrifice, or bear personal inconvenience, for the greater national good (see also Tillin 2017).

States have seemed ill-equipped to resist this nationalising tide. One after another of the states that had been a major part of the constellation of non-BJP states have seen their strength as opposition bastions eroding. While there are local reasons at play in each state that may explain the emergence of more pro-Centre politics -such as the death of Jayalalithaa in Tamil Nadu or coalition strains in Bihar – there may also be a wider structural logic at play.

Modi has shown a vigorous determination to assert the power of the Prime Minister’s Office, and of central government more generally. The demos-enabling characteristics of India’s constitution aid him in the process of consolidating national power and setting national terms

of political debate. The ability of states to act as veto players at the central level is limited by design. For example, while certain states have protested against measures that appear to transgress the rights of states, in general, the Rajya Sabha has not been a forum for either debating or halting central incursions into the states' domain. Rather it has been the courts that have so far played the more prominent role in regulating the centre-state balance of power.⁷

State-level leaders can also struggle to keep political action or debate localised within their states. On the whole, incumbent regional parties or politicians prefer to keep the contours of political competition localised in order to preserve their power vis-à-vis local opponents and prevent them benefiting from national actors or resources. Edward Gibson (2013), writing about Centre-periphery competition in the process of democratisation, describes this as a process of 'boundary control' by which national and local actors compete to define the terms of political competition. The ability of the central government to intervene in the local affairs of federal sub-units is curtailed in territorial regimes with the characteristics of what Stepan describes as more 'demos-constraining systems'. In such settings, Gibson argues, regional incumbents will be better able to preserve the dominance of the local over national issues and actors in order to preserve their rule. In countries such as Argentina and historically in the United States, this has empowered state governors who have maintained their power base by utilising a favourable flow of resources and powers from the centre to oil the wheels of local patronage machines. However, in countries where states or provinces are less empowered constitutionally, such as in India, local elites may find it harder to prevent the penetration of local political life by national issues and actors when a polity-wide party or a party with national scope is in office at the Centre.

The design of India's territorial regime therefore weakens the ability of states to resist a centralising national government when it is equipped with a majority. Chief Ministers who

had become powerful figures in the 1990s and 2000s in the context of a regionalised party system and coalition government at the national level, have been weakened by the return to majority government in New Delhi. For these reasons we must see federalism and democracy as having a dynamic inter-relationship that is shaped by changes in the party system. However, institutional design – particularly the ‘demos enabling’ characteristics of the federal system – mean that changes to Centre-state relations generated by party system change can also be reversed.

Conclusion

This essay has shown that India’s constitution – by design - places weak constraints on a party with a majority at the centre. These features distinguish India’s model of federalism from some of the classic theories and models seen elsewhere which assume that federalism places an implicit check on the power of national majorities. Other institutional innovations in recent years have also enhanced the policy-making power of the Centre in India. While a short essay like this cannot offer a comprehensive account of federalism’s evolution over the last seven decades, it has attempted to provide insights into the implications of federalism for democracy (and vice versa) at the present juncture.

In India, the constitutional set-up has muted the political response against central incursions into the rights of states since 2014. However, just as in an earlier era of opposition coordination against Congress dominance, it remains possible that centre-state relations will become a plank around which non-BJP opposition parties may coalesce in the longer term. In the first half of 2018, some southern states started to build political platforms based on a critique of Centre-state relations following the publication of the Terms of Reference for the Fifteenth Finance Commission. While this ‘southern revolt’ has been framed strongly within

state-specific terms, it has also brought several states together around a potentially common critique. With many of the non-BJP opposition parties using the formation of a Congress-Janata Dal (S) coalition in Karnataka in May 2018 as a platform to build broader opposition unity, the stage is being set for the next Lok Sabha elections. Yet, as this essay has shown, the BJP's command over national resources and ability to set the terms of political debate from the Centre present the opposition with a strong challenge (see also Tillin 2018).

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¹ The author would like to thank an anonymous reviewer for *Economic and Political Weekly*, and participants at the King's workshop in June 2017, for their comments on earlier versions of this manuscript.

² Some observers described India's model as one of 'quasi-federalism' because of the limitations it placed on the autonomy of states (Wheare 1963) and the constitution itself does not use the word federalism. However in the decades since 1950, constitutional practice has evolved to become more federal, with the Supreme Court also recognising federalism as part of the 'basic structure' of the constitution in 1994, albeit a form of federalism with a strong Centre.

³ These ideas were set out in a number of texts (Stepan 1999, 2001, 2004)

⁴ See Thachil (2014), as well as Kashyap (2017) for an overview of the Sangh Parivar's work in Manipur before the 2017 state elections.

⁵ Schakel and Swenden (2016) show that while Modi's appeal increased the territorial reach of the BJP in 2014, the party's victory was not the product of a process of party system renationalisation measured either by the degree of similarity in voting patterns across states, or by the degree of congruence between party systems or how people vote in national and state elections. In fact, the 2014 elections continued a trend of party system denationalisation. State electorates voted *more* differently from each other in 2014 than in 2009. There was, however, a rise in 'dual voting' in 2014 whereby voters split their vote according to the level of the election. This indicates that Modi's personal appeal may have led voters to opt for the BJP in Lok Sabha elections, but vote differently in state elections. This would challenge the trend of the previous two decades, in which state-level factors were held to be determinant of vote choice in national elections: see Yadav and Palshikar (2009)

⁶ My thanks to Suhas Palshikar for discussions on this point.

⁷ For instance, in mid-2017, the central government attempted to use central powers over animal welfare (under the Prevention of Cruelty to Animals Act, 1960) to impose severe restrictions on cattle traders (requiring them to produce proof of the ownership of farmland, in order to demonstrate that cows are sold for agricultural purposes rather than slaughter), despite the fact that animal husbandry is a state subject, and that different states operate their own rules on the kinds of cattle that can be slaughtered and when. The policy was put on hold by

the Madras High Court, and the Supreme Court subsequently extended the suspension of the policy across India. Similarly when the central government imposed President's Rule on Arunachal Pradesh and Uttarakhand in 2016, the Supreme Court intervened to reinstate the Congress state governments.